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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

In re A.Y., a Person Coming Under the
Juvenile Court Law.

SAN FRANCISCO HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

ELIZABETH P.,

Defendant and Appellant.

A133336

(San Francisco City & County
Super. Ct. No. JD11-3011)

Elizabeth P. (appellant or grandmother), is the paternal grandmother of minor A.Y. She appeals from the order denying the third request for de facto parent status and appointment of counsel. We dismiss the appeal as moot.

I. BACKGROUND

In January of this year, we rendered our unpublished opinion in consolidated appeals noticed by counsel for A.Y. from (1) the disposition order placing A.Y. in foster care rather than relative placement, as well as the order denying appellant's request for de facto parent status; and (2) the order granting the Welfare and Institutions Code¹ section 388 petition of respondent San Francisco Human Services Agency (Agency). (*In re A.Y.*

¹ All statutory references are to the Welfare and Institutions Code.

(Jan. 17, 2012, A132308, A132441).) Therein we set forth the significant factual background through the first section 388 petition process:

“A. Early Years

“A.Y. . . . was born drug exposed in May 2003. Her biological parents, L.M. and Mark Y., were drug users and found it difficult to care for the newborn. The mother abandoned the baby shortly after her birth. The father and baby moved in with his sister M.M. and her husband Jonathan. Mark and his daughter remained there until A.Y. was one year old, at which time he moved to Los Angeles, leaving her behind. M.M. and Jonathan adopted A.Y. in March 2006. M.M. has three biological children: Ashley Y., Alyssa F. and Nathan K.

“In January 2009 M.M. and Jonathan separated. M.M. took A.Y. and her sisters to Japan in July of that year and tried, without success, to obtain visas for them. The children returned to the United States the next month; A.Y. and Ashley went to live with Jonathan. M.M. remarried, remained in Japan, and showed no interest in unifying with A.Y. When Jonathan became unemployed, he could no longer support the three children in his care. In November 2009 he signed a notarized letter giving permission for A.Y. to live with grandmother^[2] in San Jose.

“Grandmother arranged special education for A.Y. in San Jose. At school A.Y. kicked a first-grader in his private parts and pushed a girl to the ground. As a result of these incidents, school officials requested that grandmother take A.Y. to the Asian American Institute (AAI) for services. AAI contacted E.M.Q. Families First Agency, which provided A.Y. with in-home therapy four days a week.

“In September 2010, a referral was made to the Santa Clara County Child Protective Services Agency (CPS). Grandmother had reported feeling overwhelmed and depressed. She was taking medication for depression and had a prescription for sleeping pills. One week prior to the referral, grandmother reported she had attempted suicide by

² “Grandmother is the mother of Mark Y., A.Y.’s biological father, and M.M., her adoptive mother.”

overdosing, but stopped when she thought about who would take care of A.Y. She was overwhelmed by the child's acting out and 'behavior issues.'

"CPS received another referral in December 2010, with further reports that grandmother was depressed and overwhelmed, with a history of suicide threats. Grandmother said A.Y. was disrespectful and laughed at her, reporting that she did not 'want to go on anymore' and was 'sick and tired and done with taking care of the child.'

"On January 12, 2011, grandmother again threatened suicide, and was 'assessed for [section] 5150 status' but did not qualify. At that time she informed a child welfare worker that she could no longer care for A.Y. because the girl was out of control, and hit her. A.Y.'s behavior drove her to thoughts of suicide.

"Ralph M., grandmother's fiancé, did not want to take care of A.Y. while grandmother was being evaluated. Therefore A.Y. was taken to the county shelter and then transferred to San Francisco because her father resided there and still maintained parental rights.

"B. Section 300 Petition

"Respondent . . . Agency . . . filed a section 300 petition on January 14, 2011, alleging . . . that A.Y.'s parents abandoned her and had not maintained contact for approximately three years. The petition further alleged that A.Y. was left with grandmother, who threatened suicide and was no longer willing or able to care for her.

"Protective Services Worker (PSW) Maryalice Means stated in the detention report that grandmother told a social worker 'that she had thought about overdosing on sleeping pills,' also indicating that A.Y.'s behavior drove her to such thoughts and she did not 'want to deal with' the child anymore. A.Y. said she did not want to live with Ralph because he was mean and yelled at her, nor did she want to live with her father. Grandmother told A.Y. that her father got angry and threw a laundry basket at her sister. A.Y. also said grandmother hit her.

"An addendum report noted that the adoptive mother did not want to reunify with A.Y. and would relinquish her parental rights. The adoptive father was similarly willing to relinquish his parental rights. . . . PSW Means reported that grandmother would not

allow the father and siblings to visit A.Y. while in her care, and claimed A.Y.'s therapist recommended severing ties with all of them.^[3] She also stated that grandmother displayed mental health symptoms 'that are believed to either be responsible for, or be a major contributing factor for the behaviors [A.Y.] has displayed while in her care.' A.Y.'s counselor informed PSW Means that grandmother's behavior caused the psychologist to advise that she receive therapy and a psychological assessment. Grandmother became angry and abruptly ended the appointment.

"At the detention hearing, both parents denied the allegations but submitted to the detention. The court ordered A.Y. detained and approved placement in emergency foster care. At the end of the hearing counsel for the minor briefly touched on whether counsel should be appointed for grandmother as a de facto parent, but the court declined to do so at that time.

"PSW Melissa Rosenberg submitted a jurisdiction/disposition report, reiterating that the adoptive parents were not interested in reunifying with A.Y.; both expressed major concern about grandmother's mental health and believed she was not capable of adequately parenting A.Y. Grandmother and Ralph visited A.Y. every week. The [Agency] was in consultation with A.Y.'s therapist to determine if the visits should take place less frequently, because it was not recommending that A.Y. return to grandmother's care. Grandmother reported that she was under the care of a therapist and was working on stabilizing her mental health.

"According to school service providers, therapists, and an assessment, A.Y. exhibited symptoms of reactive attachment disorder, depression, oppositional behaviors and anxiety. Also, although she has never made an attempt, she also had a history of suicidal ideation with a plan. Apparently A.Y. was adjusting well in her current foster placement, getting along with the foster parent and the other child in the home. Neither the foster parent nor her teachers noted any major behavioral or emotional issues with

³ "The therapist denied telling grandmother that A.Y. should not visit with her siblings and father, but indicated she may have said she would not recommend leaving A.Y. at her father's home for visits."

her. PSW Rosenberg recommended recruiting an adoptive home for A.Y. and that the court set a section 366.26 hearing. She indicated the Agency was not pursuing placement with grandmother for three reasons: (1) grandmother's serious mental health issues which affected A.Y. negatively; (2) A.Y.'s adoptive parents did not sanction such a placement; and (3) grandmother had no legal right to reunification.

"A settlement conference took place in March 2011. The minor's attorney indicated that grandmother requested placement, and asked that the court grant her de facto parent status. The court refused to appoint counsel for grandmother.

"In further proceedings, father submitted to amended allegations and waived reunification, as did mother.

"C. Contested Disposition/Placement Hearing

"The court conducted a contested disposition/placement hearing to address A.Y.'s placement with her grandmother. PSW Rosenberg testified that she had considered grandmother as a possible placement but concluded that disposition would not be appropriate. She conducted a background check of grandmother and Ralph against the child abuse index; although no matches were found, the prior Santa Clara County CPS referrals were revealed. The referrals were investigated and closed as unfounded, but issues were identified that needed to be addressed and the county sought to link grandmother and A.Y. to therapeutic services to resolve those issues. Additionally, there were no criminal record matches for grandmother. However, there were two for Ralph: a 'DUI' misdemeanor for which he received three years' probation,^[4] and a misdemeanor conviction of inflicting corporal injury on a spouse or cohabitant in 1991.

"As well, PSW Rosenberg considered A.Y.'s serious mental health issues, including depression, posttraumatic stress disorder, psychotic features and amnesic episodes, issues which her therapists believed were made worse, if not caused by, living with grandmother. According to Rosenberg, A.Y. 'has a lot of fear in regards to her grandmother that, according to her therapists, are impeding her getting better.'

⁴ "At the time of the hearing Ralph was still on probation."

“Rosenberg also had concerns about placement with grandmother, noting her history of suicidal ideation and depression which she expressed were worsened by caring for A.Y. Further, grandmother stated she has a heart condition and suffered six heart attacks that year, at least two of which she felt were brought on by A.Y. Rosenberg also explained that A.Y. was referred to CPS because of the ‘5150’ evaluation of grandmother requested by the police, and the fact that when she was transported to the hospital,^[5] there was no caretaker remaining in the home.

“Rosenberg also acknowledged that A.Y. was very excited and pleased to have the supervised visits with grandmother and Ralph. However, there were reports from visitation staff as well as the foster parents indicating concern about A.Y.’s behavior after the visits.

“Grandmother testified about the therapeutic services A.Y. received and explained that she herself was ‘supposed’ to receive therapy through AAI, but her therapist was not available. Instead, grandmother arranged for individual therapy through Valley Mental Health and found it very helpful. As well, someone from E.M.Q. came to her home and gave her ‘some hints on how to deal with [A.Y.]’

“Grandmother stated she did not have a history of mental health services, and was not under the care of a psychiatrist in 2009 and 2010. She was taking medication for fibromyalgia and rheumatoid arthritis; used nitroglycerin for chest pains (she did not receive a confirmed diagnosis that the chest pains were heart attacks); and took Doxepin and Valium for insomnia.

“Further, grandmother said she would never consider suicide. Faced with frustration dealing with A.Y., she would say, ‘I just can’t take it anymore,’ or ‘I just wished I would disappear.’ A.Y. would leave notes saying, ‘I hate you. I hope you die.’ Grandmother would say, ‘You really want Nana to die?’ Incidents of A.Y.’s uncontrollable behavior included kicking and throwing things at grandmother, one time

⁵ “Grandmother, in fact, was not hospitalized and no ‘5150’ hold was issued. She confirmed she was never placed in a hospital after being evaluated by hospital staff, physicians or the police.”

fracturing her fingers. A.Y. would also scream, kick and bang the walls. AAI never discussed the possibility of medication for A.Y., but medication was discussed when A.Y. was detained. Additionally, grandmother was told A.Y. would just be detained only for a week ‘to get her evaluated’ so she ‘agreed to let her go.’

“Ralph M. testified that he met with a social worker from San Francisco, but did not meet with the Santa Clara County worker. He did not think grandmother ever seriously threatened suicide, and did not believe her heart condition would impede her ability to care for A.Y. He denied engaging in criminal behavior that resulted in his two misdemeanors. He did not have any problems controlling A.Y.’s behavior; they got along ‘famously.’

“The juvenile court continued A.Y. in foster care, denied grandmother’s request for placement, and ordered a bonding study to assess the relationship between grandmother and A.Y. Further, it ordered that A.Y.’s relationship with grandmother and Ralph M. be maintained, pending further evaluation.

“D. *Bonding Study Vacated*

“Five days after the above hearing, a social worker applied to the court to administer psychotropic medication to A.Y. A month earlier, she took a knife intending to kill herself, but actually did no harm. Dr. Bonnie Taylor, the prescribing physician, stated: ‘[A.Y.] meets criteria for Post Traumatic Stress Disorder with extreme symptoms of dissociation with identity shifts, reenactment of trauma, conscious and unconscious imitation of her very agitated, anxious, suicidal and depressed grandmother, avoidance of stimuli reminding her of her trauma, hyperarousal with insomnia, nightmares, panic attacks, anxiety, and high levels of distractibility. She hears her grandfather’s voice as well as unknown voices telling her to harm herself. She is frequently emotionally dysregulated [*sic*] with episodes of sobbing at home and at school.’ The doctor recommended individual therapy, group therapy and psychotherapy twice a week. The court granted the application as requested.

“In May 2011, the Agency filed a section 388 petition requesting that the court set aside the bonding study because A.Y.’s treating psychologist, therapist and psychiatrist

believed that A.Y.'s participation in the study would disturb her mental health treatment. Dr. Taylor submitted a letter supporting the petition. In the letter Dr. Taylor outlined A.Y.'s 'complex developmental trauma,' as well as the diagnosis of posttraumatic stress syndrome and depression and the various impairments she demonstrated, including impairment in attachment, cognitive functioning and self-concept. She wrote: '[A.Y.] has identity shifts and she has been observed by this psychiatrist to both consciously and unconsciously imitate her grandmother in a pathological way. . . . The imitation of her grandmother appears to be a reenactment of the psychological trauma she experienced while living with her grandmother. For example, A.Y. reported [that] she told her grandmother she was suicidal while she lived with her grandmother. When she told her grandmother she had gone into the kitchen to get a knife to kill herself, A.Y. reported her grandmother's response was to ask her, "Do you want me to take all my pills?" When A.Y. repeated her grandmother's response to her, her voice and demeanor of an old, bitter and angry woman was complete and striking.' And further: '[A.Y.]'s individual identity has been overwhelmed by her grandmother's personality and needs. . . . [A.Y.]'s identity is fragile and underdeveloped Her mental health treatment could actually be disturbed by an unnecessary bonding study.'

"At the contested section 388 hearing, counsel for A.Y. argued that the bonding study was not duplicative and indeed was necessary on the issue of A.Y.'s placement and adoption. PSW Rosenberg stated that the clinicians were considering involving grandmother in the therapy process for A.Y. in the future, but presently did not recommend incorporating grandmother into the therapy based on their concern that A.Y. suffers an associative identity disorder. The court granted the Agency's petition, noting that it assumed that at some point grandmother would be involved and evaluated as a relative willing to take placement. If that did not occur, the court indicated it would address the issue 'at some point.' The court was concerned that the child's mental health was fragile and did not 'want to disturb her at this point.' The court did not make any finding as to grandmother's fault for A.Y.'s mental state." (*In re A.Y.*, *supra*, A132308, A132441.)

This court affirmed the order denying de facto parent status to grandmother on grounds that A.Y. had no standing to challenge the order. We further affirmed the disposition order, concluding that the juvenile court did not err in denying relative placement with grandmother. Finally, affirming the order granting the section 388 petition to vacate the bonding study, we determined that the lower court properly exercised its discretion. (*In re A.Y.*, *supra*, A132308, A132441.)

A. Reports in Advance of the Section 366.26 Hearing

PSW Philip Zaragoza prepared the section 366.26 report for the selection and implementation hearing. He recommended continuing the hearing for 180 days in order to locate an adoptive home. Zaragoza indicated that due to high anxiety, A.Y. became distracted at school and was not able to focus on classroom tasks. A.Y. was diagnosed with posttraumatic stress disorder and depression not otherwise specified, for which she was prescribed medication to address extreme symptoms. She was receiving therapy from a therapist, Heather Clendenin, and medication management by a psychiatrist, Bonnie Taylor.

Zaragoza observed that appellant's history of depression and suicidal ideation became part of A.Y.'s behavior and repertoire. He recommended that visits with appellant be limited to allow the minor to heal. The report referenced a letter from Dr. Taylor, in which she reported that "[t]he psychological abuse which is known occurred while she was in the care of her maternal grandmother, her last relative caretaker"

Court-appointed special advocate Roni Pomerantz also filed a report in preparation for the section 366.26 hearing. Pomerantz recommended that A.Y. remain a dependent of the court in her current placement. She described A.Y. as friendly, outgoing and polite.

The foster mother mentioned to Pomerantz that A.Y.'s father recently called, giving A.Y. details that sounded like grandmother was undergoing surgeries. A.Y. became stressed upon hearing this information.

B. Second Psychological Evaluation

Dr. Amy Watt also performed a psychological evaluation of A.Y.; her consultation report was admitted into evidence at the section 366.26 hearing. Dr. Watt reported that the minor talked about how her father wants to “ ‘K-I-L-L’ ” people, and she saw an uncle having “ ‘S-E-X’ ” with his girlfriend. When A.Y. talked about visits with appellant, she started whispering unintelligible sentences and talking about “ ‘K-I-L-L’ ” and “ ‘S-E-X.’ ” Spelling these words indicated that the mere mention of them might trigger traumatic memories, and was probably an avoidance mechanism. The girl “was mostly disorganized in her rambling and description about her life living with her grandmother and with her adoptive parents. . . . The frequent transitions, multiple abandonment, and her grandmother’s mental illness have likely created much negative emotions in [A.Y.] These events have created so much trauma for [A.Y.] that her sense of reality seems to be impaired.”

Dr. Watt cautioned that it was important to ensure safety and stability of grandmother’s psychiatric symptoms before A.Y. have unsupervised visits, noting that during the testing session, the minor seemed reluctant to visit grandmother. Should A.Y. return to grandmother’s custody, it was important that grandmother have information about the child’s issues, and understand how her own symptoms affect A.Y. and grandmother’s ability to care for her.

Dr. Watt diagnosed A.Y. with posttraumatic stress disorder, with symptoms of high anxiety; recurrent recollections of traumatic events; sleep disturbance; a high level of internal distress; depression; auditory hallucinations; disorganization; and suicidal ideation. The presence of reactive attachment disorder was also suggested.

C. Appellant’s Subsequent Request for De Facto Parent Status; Agency’s Section 388 Petition

Appellant again requested de facto parent status on August 1, 2011. In connection with the request, appellant stated she had known A.Y. all her life and had worked with her schools and therapists to control her behavior. Appellant had knowledge about A.Y.’s medical and educational background, and her likes and dislikes. A.Y. had a great

relationship with appellant's fiancé. Appellant loved A.Y. very much and wanted to adopt or assume legal guardianship. As well, appellant had a new therapist who was helping her and she was receiving regular medical care.

Around the same time, the Agency filed a section 388 petition requesting the court to reduce A.Y.'s supervised visits with appellant from weekly to monthly. The Agency cited Dr. Taylor's evaluation in which she "describe[d] in detail [A.Y.'s] reenactment of the 'psychological trauma [A.Y.] experienced while living with her grandmother'" and asserted that the minor's treatment could be undermined by too much exposure to grandmother.

These matters came before the juvenile court for a hearing on August 17, 2011. The court concluded that the request for de facto parent status and appointment of counsel was equivalent to a motion to reconsider, which should be presented to the judicial officer who made the prior decision. The court recognized that appellant might not be the cause of all of A.Y.'s issues, but the visits were "very disturbing" and a "trigger point." The court denied the request, finding nothing that would cause it to change the prior rulings. This appeal followed.

The court also granted the section 388 petition, limiting visits to one per month.

II. DISCUSSION

The juvenile court applies the preponderance of evidence standard to make the factual findings related to an application for de facto parent status. On appeal we defer to the juvenile court's factual findings, where there is substantial evidence to support them. The ultimate question of whether to grant or deny an application for de facto parent status is addressed to the lower court's discretion, and we apply an abuse of discretion standard of review. (*In re D.R.* (2010) 185 Cal.App.4th 852, 864.)

Appellant is adamant that the trial court abused its discretion in denying her request for de facto parent status.

The Agency counters that the appeal is moot and must be dismissed because parental rights were terminated at the July 25, 2012 section 366.26 hearing (written order issued and filed Aug. 14, 2012, stating there is clear and convincing evidence that it is

likely A.Y. will be adopted). That order is now final and no appeal has been taken. (Cal. Rules of Court, rule 8.406(a)(1); *In re Alyssa H.* (1994) 22 Cal.App.4th 1249, 1253-1254.) The Agency's argument is this: Once the juvenile court terminates parental rights, matters of reunification and placement are no longer at issue and the court shifts attention to ensuring that all legalities necessary to ensure A.Y.'s adoption are satisfied. Appellant's de facto parent request will not affect subsequent court orders, since her status or lack of status as a de facto parent has no bearing on A.Y.'s adoptive placement.

Appellate courts only decide actual controversies. If, pending appeal and without fault of the respondent, an event occurs which renders it impossible for the reviewing court to grant any effective relief should it decide the case in favor of the appellant, the appeal is moot and will be dismissed. (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1316; *Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 10.)

We agree with the Agency that this appeal is moot. We cannot render effective relief, whether or not the court erred in denying appellant's most recent request for de facto parent status. The case of *In re Jessica K.* is helpful. There, the mother filed a section 388 petition seeking the return of her daughter to her custody on grounds she had obtained sobriety and was participating in treatment. The court summarily denied the petition, and the mother appealed. Meanwhile, the juvenile court terminated the mother's parental rights, she did not appeal and that order became final. The court stated: "Because mother's parental rights cannot be restored even were we to agree with mother that the summary denial was an abuse of discretion, a hearing on mother's petition would be futile." (*In re Jessica K., supra*, 79 Cal.App.4th at p. 1315.)

Similarly, in the case at hand, granting appellant's request for de facto parent status at this point would be an idle act. De facto parent status will not provide appellant standing to appeal the termination of parental rights, and in any event that order is final. Such status gives the present or previous custodian standing "to participate as parties in disposition hearings and any hearing thereafter at which the status of the dependent child is at issue." (Cal. Rules of Court, rule 5.534(e).) We are now beyond disposition and the status of A.Y. is no longer at issue: The permanent plan has been established, parental

rights have been terminated, and the Agency is now moving toward effecting A.Y.'s adoption. Nor will such status have any effect on A.Y.'s adoptive placement because it will not give appellant any preferential status or guarantee that A.Y. will be placed in her home.

Appellant charges that we must review the record as it existed at the time the appeal was filed, citing *In re Patricia L.* (1992) 9 Cal.App.4th 61, 62, footnote 1. There, the grandmother appealed an order terminating her de facto parent status. Plaintiff department contended the appeal was moot because the grandmother subsequently filed a new application and then withdrew it because the minor was returned to the mother's custody. The reviewing court concluded that the subsequent withdrawal did not render the appeal moot, noting that it is required to review the record as it exists at the time of the appeal. More importantly, the record indicated the grandmother did not abandon her right to appeal the termination order.

In re Patricia L., supra, 9 Cal.App.4th 61 does not address the core mootness question, namely whether subsequent events render it impossible to deliver an effective remedy. Presumably, even though the minor had been returned to the mother's custody, the dependency had not been terminated and the minor's status as a dependent was still at issue. (Cal. Rules of Court, rule 5.534(e).) Therefore, restoring de facto parent status would be an effective remedy and the appeal was not moot.

In any event, appellant misunderstands the nature of the doctrine of mootness. Mootness *always* hinges on a subsequent action or event which occurs outside the confines of the record as it existed at the time the appeal was taken and thereafter comes to the attention of the reviewing court. “‘[A]n action that originally was based on a justiciable controversy cannot be maintained on appeal if all the questions have become moot by *subsequent acts or events*. A reversal in such a case would be without practical effect, and the appeal will therefore be dismissed.’ (9 Witkin, Cal. Procedures (4th ed. 1997) Appeal, § 642, p. 669.)” (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404, italics added.)

III. DISPOSITION

The appeal is dismissed as moot.

Reardon, J.

We concur:

Ruvolo, P.J.

Rivera, J.